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FEB 21 2007

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY *[Signature]*

BEFORE A HEARING OFFICER

**IN THE MATTER OF A MEMBER
OF THE STATE BAR OF ARIZONA,**

**DAVID M. ZORIN,
Bar No. 023550,**

Respondent,

Case No. 06-1347

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
RECOMMENDATION**

PROCEDURAL HISTORY

A complaint was filed on October 31, 2006. Respondent was served by regular first class mail at his address on record with the State Bar Membership Department. The Disciplinary Clerk noticed a default and assigned the matter to me on December 14, 2006. An aggravation / mitigation hearing was held telephonically on February 17, 2006. The State Bar was represented; Respondent was not.

FINDINGS OF FACT

1. Respondent was conditionally admitted to the practice of law in Arizona on July 19, 2005. As a condition of admission, Respondent was obligated to comply with a Member Assistance Program (MAP) Contract.

2. Respondent entered into the contract on July 19, 2005.

3. Respondent failed to comply with the contract by failing to maintain contact with his MAP monitor and failing to submit to random biological fluid testing as required.

4. Respondent failed to respond to the State Bar's screening investigation requests.

CONCLUSIONS OF LAW

1. Respondent violated ER 8.1(b) by failing to respond to the Bar's screening investigation.

1 2. Respondent violated Rules 53(f) and 53(g) by failing to comply with the
2 conditions of his admission.

3 AGGRAVATING AND MITIGATING FACTORS

4 The following aggravating factor is present in this case: 9.22(e) bad faith obstruction
5 of the disciplinary proceedings by intentionally failing to comply with rules or orders of the
6 disciplinary agency.

7 The following mitigating factor is present in this case: 9.32(a) absence of a prior
8 disciplinary record.

9 DISCUSSION OF APPROPRIATE SANCTION

10 Lawyer discipline is imposed not to punish the lawyer but to protect the public and
11 deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d 1315, 1320 (1993).
12 It is important to instill public confidence in the bar's integrity. *Matter of Horwitz*, 180 Ariz.
13 20, 29, 881 P.2d 352, 261 (1994). To determine the appropriate sanction, the facts of the
14 case, the A.B.A. Standards, and the proportionality of discipline imposed in analogous cases
15 should be considered. *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).
16 The A.B.A. Standards require that the following criteria be considered: (a) the duty violated;
17 (b) the lawyer's mental state; (c) actual or potential injury; and (d) aggravating and
18 mitigating factors.

19 Here, the duty was one owed to the profession. As the State Bar has pointed out,
20 there is no ABA Standard directly applicable. However, by analogy, the standard relating
21 to the violations of duty to the profession seems to be the most applicable.

22 ABA Standard § 7.2 provides that suspension is appropriate when a lawyer knowingly
23 engages in conduct that is a violation of a duty owed as a professional, and causes injury or
24 potential injury to a client, the public, or the legal system. Here, Respondent violated his
25 duty to the profession but there was no injury or potential injury to a client or the public.
26 There was injury, however, to the legal profession as Respondent knowingly failed to
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1 acknowledge his obligations as a conditional admittee and failed to abide his obligations
2 attendant to that status.

3 PROPORTIONALITY ANALYSIS

4 Two cases are cited by the State Bar. In *In Re Rolph*, SB06-0011, a conditional
5 admittee did not report to his monitor. The conditions of admittance in that case were
6 financial and he did participate in the disciplinary process. He was suspended for ninety days
7 with two years probations. In the case of *In re Pohto*, SB03-0145, the conditional admittee
8 failed to comply with his MAP contract, failed one urinalysis and had been charged with DUI
9 while a conditional admittee. He participated in the process and was suspended for six
10 months and a day.

11 DISCUSSION OF APPROPRIATE SANCTION

12 Suspension is the appropriate sanction for Respondent's conduct based upon the
13 Standards. Given the circumstances of this case, where Respondent was required to comply
14 with a MAP contract structured to address substance abuse issues, the protection of the
15 public requires that Respondent be required to demonstrate fitness to practice before being
16 re-admitted. Accordingly, it is recommended that the Respondent be suspended for six
17 months and a day.

18 It is further recommended that Respondent be placed on probation for at least one year
19 following reinstatement and be required to enroll in the Member Assistance Program (MAP)
20 and meet with the MAP director prior to the effective date and develop a memorandum of
21 understanding pursuant to the director's recommendation as a condition of reinstatement.

22 It is further recommended that Respondent be assessed the costs of these disciplinary
23 proceedings.

24 DATED this 21st day of February, 2007.

25 
26 Martin Lieberman
27 Hearing Officer 7W
28

1 Original filed this 2nd day
2 of February, 2007, and

3 Copies of the foregoing mailed
4 this 2nd day of February, 2007, to:

5 David M. Zorin
6 Respondent
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18 By: 
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